



## WISCONSIN SUPREME COURT

Tuesday, March 4, 2003

10:45 a.m.

01-2953      Ryan Scott et al. v. Savers Property & Casualty Insurance Co. et al.

*This is a review of a decision of the Wisconsin Court of Appeals, District IV (headquartered in Madison), which affirmed a judgment of the Portage County Circuit Court, Judge James M. Mason presiding.*

In this case, the Wisconsin Supreme Court will decide whether guidance counselors and the school districts for which they work may be held accountable when they give students wrong information, and the students lose out by relying upon this information.

Here is the background: Ryan Scott was a student and hockey player at Stevens Point Area Senior High. His parents asked the school's licensed guidance counselor for advice about the core courses required for NCAA Division I scholarship eligibility. The parents allege that the counselor told them that a broadcast communications class would meet the English requirement. They allege that Ryan relied upon the counselor's advice and took this course in the second semester of his senior year. Upon graduation, Ryan was offered a full hockey scholarship at the University of Alaska, a Division I school. The university, however, pulled its offer when it discovered that Ryan had not met the core English requirements for the scholarship because the broadcast class was not an approved English class.

Ryan sued the school district, arguing that the counselor had been negligent and that the school district had violated its obligation under state law and administrative regulation to provide students and parents with professional, expert counseling services. Further, Ryan argued that the counselor had made a specific promise to provide him with counsel on NCAA-approved courses. Broken promises are known in the law as "promissory estoppel." When a person relies upon a promise that is breached, this can provide the basis for a lawsuit.

The circuit court found that the Scotts did not have a case; in legal terminology, they "failed to state a claim upon which relief could be granted." In making this ruling, the judge relied upon a recent decision of the Wisconsin Supreme Court<sup>1</sup> in a case involving the Racine School District. A person sued the district alleging that he had received inaccurate information from a district benefits specialist on what benefits were available to him following the death of his wife. In that case, the trial court and Court of Appeals dismissed the lawsuit and the Supreme Court affirmed those decisions.

The basis for the decision in the Racine case was that the benefits counselor was not obligated under law to provide advice and therefore was entitled to governmental immunity. This immunity protects people who work for the government, such as police and firefighters, from facing legal liability when they make a decision and it turns out wrong. In this way, people are able to do their jobs without constant fear that a mistake will result in a lawsuit. However, when a government worker is required by law to

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<sup>1</sup> Kierstyn v. Racine Unified School District, 228 Wis. 2d 81, 596 N.W.2d 417 (1999)

perform a duty and fails to perform that specific duty, or engages in acts that are malicious, then that person may be held liable. In determining whether a duty is required (“ministerial”), the courts rely upon a definition set out in a 1976 Wisconsin Supreme Court case<sup>2</sup>. According to this case, a duty is required only when it is “absolute, certain and imperative, involving merely the performance of a specific task when the law imposes, proscribes and defines a time, mode and occasion for its performance with such certainty that nothing remains for judgment or discretion.” If a public worker fails to perform a duty that meets this definition, s/he may be held legally liable for harm that results.

The circuit court found that in this current case, the counselor’s advising of the Scotts did not meet the definition of a ministerial duty. Indeed, the appellate court noted that the process of counseling individual students and analyzing their various situations is, by its nature, discretionary. Therefore, both lower courts ruled, the counselor and the school district could not be sued.

Ryan and his parents now seek review by the Supreme Court, arguing that Wisconsin law requires schools to provide academic guidance and counseling. If that law is to have any meaning, they say, schools must be held liable when their counselors disseminate wrong information, especially when the correct information is easily accessible in the counselor’s reference materials.

The Supreme Court will decide whether the counselor and school district have immunity from a lawsuit in these circumstances.

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<sup>2</sup> Lister v. Board of Regents, 72 Wis. 2d 282, 240 N.W.2d 610